

Nos. 22-15514 & 22-16349

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ILIJA MATSUKO,

Claimant-Appellant,

v.

APPROXIMATELY 69,370 BITCOIN (BTC), BITCOIN GOLD (BTG),
BITCOIN SV (BSV), AND BITCOIN CASH (BCH),

Defendant.

**SUPPLEMENTAL EXCERPTS OF RECORD
VOLUME 1 OF 1**

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
NO. 3:20-CV-07811 RS

STEPHANIE M. HINDS
United States Attorney

MERRY JEAN CHAN
Assistant United States Attorney

MATTHEW M. YELOVICH
Chief, Appellate Section,
Criminal Division

450 Golden Gate Avenue, 11th Floor
San Francisco, CA 94102
(415) 436-7200

**Attorneys for Plaintiff-Appellee
UNITED STATES OF AMERICA**

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Rebecca L. Wilson (SBN 257613)
KUTAK ROCK LLP
5 Park Plaza, Suite 1500
Irvine, California 92614-8595
Telephone: (949) 417-0999
Facsimile: (949) 417-5394
Email: rebecca.wilson@kutakrock.com

David A. Warrington (VSB 72293)
KUTAK ROCK LLP
901 East Byrd Street, Suite 1000
Richmond, Virginia 23219-4071
Telephone: (202) 828-2437
Facsimile: (202) 828-2488
Email: david.warrington@kutakrock.com
(*pro hac vice motion forthcoming*)

Attorneys for Respondent
ROSS WILLIAM ULBRICHT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Approximately 69,370 Bitcoin (BTC),
Bitcoin Gold (BTG), Bitcoin SV (BSV),
and Bitcoin Cash (BCH) seized from
1HQ3Go3ggs8pFnXuHVHRytPCq5fGG8
Hbhx,

Defendant.

Case No.: CV 20-7811 RS

Assigned to:
The Honorable Richard Seeborg:
Courtroom 3, 17th Floor

**NOTICE OF MOTION AND MOTION
FOR AN ENLARGEMENT OF TIME TO
FILE NOTICE OF A CLAIM OR
OTHERWISE RESPOND TO
PLAINTIFF'S AMENDED CIVIL
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF DAVID
WARRINGTON; PROPOSED ORDER**

Date: February 4, 2021
Time: 1:30 p.m.
Courtroom: 3

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 4, 2021, at 1:30 p.m. or as soon thereafter as the matter may be heard in Courtroom 3, of the above-entitled court, located at 450 Golden Gate Avenue, San Francisco, California, Respondent Ross William Ulbricht, will and hereby does move this Court for an enlargement of time in which to file Notice of Claim or otherwise respond to Plaintiff's Amended Civil Complaint.

The Motion is brought pursuant to Fed. R. Civ. P. 6(b)(1)(A), Local Rule 7-1 and Local Rule 6-3. This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of David Warrington, the pleadings and records on file herein, and upon such oral and documentary evidence as may be presented by the parties at the hearing.

Dated: December 30, 2020

KUTAK ROCK LLP

By: /s/ Rebecca L. Wilson

Rebecca L. Wilson
Attorneys for Respondent,
ROSS WILLIAM ULBRICHT

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Fed. R. Civ. P. 6(b)(1)(A), Local Rule 7-1 and Local Rule 6-3, Respondent Ross William Ulbricht (“Ulbricht”), moves for an enlargement of time in which to file a notice of claim in the above-captioned Forfeiture Action and states as follows:

On November 20, 2020, the United States filed an Amended Civil Complaint (ECF No. 9) pursuant to 18 U.S.C. §§ 981(a)(1)(A), 981(a)(1)(C), 981(b), and 21 U.S.C. § 881(a)(6). [Declaration of David Warrington (“Warrington Decl.”), par. 2.]

At issue in the Forfeiture Action is the seizure of approximately 69,370 Bitcoin (BTC). [Warrington Decl., par. 3.]

On November 25, 2020, the United States caused copies of the Amended Civil Complaint and related documents as notice of the forfeiture action to be sent to Ulbricht at the United States Penitentiary, USP Tucson. [Warrington Decl., par. 4.]

Upon receipt, Ulbricht caused the notice to be sent to his counsel, David Warrington, of this firm’s Richmond, Virginia office. [Warrington Decl., par. 5.] Counsel for Ulbricht has attempted to speak with Ulbricht regarding the notice but has been unable to because USP Tucson has been on lockdown because of the COVID-19 pandemic and has been informed that Ulbricht’s counselor is on vacation until January 3, 2020. [Warrington Decl., par. 6.] Counsel has tried alternative methods of arranging a legal call with no success to date. [Warrington Decl., par. 7.] Counsel is continuing these efforts. [Id.]

Counsel for Ulbricht contacted the Government to ask whether it would agree to an extension of time for Ulbricht to file any notice of claim or otherwise respond to the Forfeiture Action, including, *inter alia*, agreeing with the Government to apply any proceeds of the forfeited property to Ulbricht’s outstanding forfeiture amount. [Warrington Decl., par. 8.]

The Government did not agree to any extension of time. [Id.]

Pursuant to Rule G(4)(b) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, the deadline for filing a notice of claim in the forfeiture action is 35 days from the date the notice was sent to Ulbricht. That deadline is December 30, 2020. [Warrington Decl., par. 9.]

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1 Because of the COVID-19 lockdown, Ulbricht counselor's vacation, and the failure of other
2 attempts to reach Ulbricht, his counsel has been unable to advise him as to his rights and obligations
3 with regard to the Forfeiture Action. An extension of time to February 5, 2021 is requested so that
4 counsel may properly advise his client of his rights and obligations with regard to the Amended
5 Civil Complaint.

6 According to the docket, there have been no previous time modifications to the case.

7 The requested extension of time will have no effect on the schedule of the case.

8 For these reasons we hereby move for an extension of time to February 5, 2021 for Ulbricht
9 to file any notice of claim or otherwise respond to the Government's Amended Civil Complaint.

10 Dated: December 30, 2020

KUTAK ROCK LLP

11
12 By: /s/ Rebecca L. Wilson

13 Rebecca L. Wilson
14 Attorneys for Respondent,
ROSS WILLIAM ULBRICHT

Rebecca L. Wilson (SBN 257613)
KUTAK ROCK LLP
5 Park Plaza, Suite 1500
Irvine, California 92614-8595
Telephone: (949) 417-0999
Facsimile: (949) 417-5394
Email: rebecca.wilson@kutakrock.com

David A. Warrington (VSB 72293)
KUTAK ROCK LLP
901 East Byrd Street, Suite 1000
Richmond, Virginia 23219-4071
Telephone: (202) 828-2437
Facsimile: (202) 828-2488
Email: david.warrington@kutakrock.com
(*pro hac vice motion forthcoming*)

Attorneys for Respondent

ROSS WILLIAM ULBRICHT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Approximately 69,370 Bitcoin (BTC),
Bitcoin Gold (BTG), Bitcoin SV (BSV),
and Bitcoin Cash (BCH) seized from
1HQ3Go3ggs8pFnXuHVHRytPCq5fG
G8Hbhx,

Defendant.

Case No.: CV 20-7811 RS

Assigned to:
The Honorable Richard Seeborg:
Courtroom 3, 17th Floor

**DECLARATION OF DAVID A.
WARRINGTON IN SUPPORT OF
MOTION FOR AN
ENLARGEMENT OF TIME TO
FILE NOTICE OF A CLAIM OR
OTHERWISE RESPOND TO
PLAINTIFF'S AMENDED CIVIL
COMPLAINT**

CV 20-7811 RS

**DECLARATION OF DAVID A. WARRINGTON IN SUPPORT OF MOTION FOR AN
ENLARGEMENT OF TIME TO FILE NOTICE OF A CLAIM OR OTHERWISE RESPOND
TO PLAINTIFF'S AMENDED CIVIL COMPLAINT**

DECLARATION OF DAVID A. WARRINGTON

I, DAVID A. WARRINGTON, declare as follows:

1. I am over the age of 21 years and have personal knowledge of the matters set forth herein. I am employed by Kutak Rock LLP. My title is Of Counsel. I am representing Ross Ulbricht in a petition for clemency proceeding which bears on the instant above-captioned Forfeiture Action

2. On November 20, 2020, the United States filed an Amended Civil Complaint (ECF No. 9) pursuant to 18 U.S.C. §§ 981(a)(1)(A), 981(a)(1)(C), 981(b), and 21 U.S.C. § 881(a)(6).

3. At issue in the Forfeiture Action is the seizure of approximately 69,370 Bitcoin (BTC).

4. On November 25, 2020, the United States caused copies of the Amended Civil Complaint and related documents as notice of the forfeiture action to be sent to Ulbricht at the United States Penitentiary, USP Tucson. [A true and correct copy of these documents is attached here as Exhibit "A".]

5. Upon receipt, Ulbricht caused the notice to be sent to me at this firm's Richmond, Virginia office.

6. I have attempted to speak with Ulbricht regarding the notice but have been unable to because I have been informed that USP Tucson has been on lockdown because of the COVID-19 pandemic and I have been informed that Ulbricht's counselor is on vacation until January 3, 2020. [Warrington Decl., par. 6.]

7. I have tried alternative methods of arranging a legal call with no success to date. I am continuing these efforts. [Id.]

8. I contacted the Government prosecutor on this case to ask whether the Government would agree to an extension of time for Ulbricht to file any notice of

1 claim or otherwise respond to the Forfeiture Action, including, *inter alia*, agreeing
 2 with the Government to apply any proceeds of the forfeited property to Ulbricht's
 3 outstanding forfeiture amount, but the Government did not agree to any extension
 4 of time.

5 9. Pursuant to Rule G(4)(b) of the Supplemental Rules for Admiralty or
 6 Maritime Claims and Asset Forfeiture Actions, the deadline for filing a notice of
 7 claim in the forfeiture action is 35 days from the date the notice was sent to
 8 Ulbricht. That deadline is December 30, 2020.

9 10. According to the docket, there have been no previous time
 10 modifications to the case, and he requested extension of time will have no effect on
 11 the schedule of the case.

12 I declare under penalty of perjury under the laws of the State of California and
 13 of the United States that the foregoing statements are true and correct to the best of
 14 my knowledge.

15
 16 Dated: December 30, 2020



By: David A. Warrington

DAVID L. ANDERSON (CABN 149604)
United States Attorney

HALLIE HOFFMAN (CABN 210020)
Chief, Criminal Division

DAVID B. COUNTRYMAN (CABN 226995)
CHRIS KALTSAS (NYBN 5460902)
CLAUDIA QUIROZ (CABN 254419)
WILLIAM FRENTZEN (LABN 24421)
Assistant United States Attorneys

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-7200
FAX: (415) 436-7234
Email: Chris.Kaltsas2@usdoj.gov

Attorneys for United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Approximately 69,370 Bitcoin (BTC), Bitcoin
Gold (BTG), Bitcoin SV (BSV), and Bitcoin
Cash (BCH) seized from
1HQ3Go3ggs8pFnXuHVHRytPCq5fGG8Hbhx

Defendant.

CASE NO.: CV 20-07811 RS

DECLARATION OF PUBLICATION

Notice of Civil Forfeiture was posted on an official government internet site
(www.forfeiture.gov) for at least 30 consecutive days, beginning on November 27, 2020, as required by
Rule G(4)(a)(iv)(C) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture
Actions, as evidenced by Attachment 1.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 06,
2021 at San Francisco, CA.

/s/ Yuan Zhu

Yuan Zhu
FSA Paralegal/Asset Forfeiture Unit

Attachment 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
COURT CASE NUMBER: CV 20-7811 RS; NOTICE OF FORFEITURE ACTION**

Pursuant to 18 U.S.C. § 981, the United States filed a verified Complaint for Forfeiture against the following property:

Approximately 69,370.22491543 Bitcoin, Bitcoin Gold, Bitcoin SV, Bitcoin Cash (21-IRS-000008) which was seized from Individual X on November 03, 2020 at 1HQ3Go3ggs8pFnXuHVHRytPCq5fGG8Hbhx, located in San Francisco, CA

Any person claiming a legal interest in the Defendant Property must file a verified Claim with the court within 60 days from the first day of publication (November 27, 2020) of this Notice on this official government internet web site and an Answer to the complaint or motion under Rule 12 of the Federal Rules of Civil Procedure within 21 days thereafter. 18 U.S.C. § 983(h)(1) permits a court to impose a civil fine on anyone asserting an interest in property which the court determines was frivolous.

The verified Claim and Answer must be filed with the Clerk of the Court, 450 Golden Gate Avenue, 16th Floor, San Francisco, CA 94102, and copies of each served upon Assistant United States Attorney David Countryman, 450 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102, or default and forfeiture will be ordered. See, 18 U.S.C. § 983(a)(4) (A) and Rule G(5) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

The government may also consider granting petitions for remission or mitigation, which pardon all or part of the property from the forfeiture. A petition must include a description of your interest in the property supported by documentation; include any facts you believe justify the return of the property; and be signed under oath, subject to the penalty of perjury, or meet the requirements of an unsworn statement under penalty of perjury. See 28 U.S.C. Section 1746. For the regulations pertaining to remission or mitigation of the forfeiture, see 28 C.F.R. Sections 9.1 - 9.9. The criteria for remission of the forfeiture are found at 28 C.F.R. Section 9.5(a). The criteria for mitigation of the forfeiture are found at 28 C.F.R. Section 9.5(b). The petition need not be made in any particular form and may be filed online or in writing. You should file a petition not later than 11:59 PM EST 30 days after the date of final publication of this notice. See 28 C.F.R. Section 9.3(a). The <https://www.forfeiture.gov/FilingPetition.htm> website provides access to a standard petition form that may be mailed and the link to file a petition online. If you cannot find the desired assets online, you must file your petition in writing by sending it to Assistant United States Attorney David Countryman, 450 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102. This website provides answers to frequently asked questions (FAQs) about filing a petition. You may file both a verified claim with the court and a petition for remission or mitigation.

STEPHANIE M. HINDS (CABN 154284)
Acting United States Attorney

HALLIE HOFFMAN (CABN 210020)
Chief, Criminal Division

DAVID COUNTRYMAN (CABN 226995)
CHRIS KALTSAS (NYBN 5460902)
CLAUDIA A. QUIROZ (CABN 254419)
WILLIAM FRENTZEN (LABN 24421)
Assistant United States Attorneys

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-436-7428
FAX: (415) 436-7234
claudia.quirroz@usdoj.gov

Attorneys for United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	CASE NO. CV 20-7811 RS
Plaintiff,)	DECLARATION OF JEREMIAH HAYNIE IN
v.)	SUPPORT OF UNITED STATES' MOTION TO
Approximately 69,370 Bitcoin (BTC), Bitcoin)	STRIKE THE CLAIMS OF CLAIMANTS BATTLE
Gold (BTG), Bitcoin SV (BSV), and Bitcoin)	BORN INVESTMENTS COMPANY, LLC, FIRST
Cash (BCH) seized from)	100, LLC AND 1ST ONE HUNDRED HOLDINGS,
1HQ3Go3ggs8pFnXuHVHRytPCq5fGG8Hbhx)	LLC
Defendant.)	Hearing Date: August 20, 2021
)	Time: 1:30 p.m.
)	Court: Hon. Richard Seeborg

I, JEREMIAH HAYNIE, state as follows:

1. I am a Special Agent with the Criminal Investigation Division of the Internal Revenue Service ("IRS-CI"). I am a case agent assigned to this case. I respectfully submit this declaration to provide certain relevant information in support of the United States' Motion to Strike the claims filed by Claimants Battle Born Investments Company, LLC; First 100, LLC; and 1st One Hundred Holdings, LLC ("Claimants"). I personally conducted the blockchain analysis of the bitcoins at issue in this case

and was involved in the investigation from its inception to the present day.

INDIVIDUAL X

2. On approximately May 6, 2012, Individual X stole 70,411.46 BTC from addresses controlled by Silk Road and transferred it to two Bitcoin addresses—1BADznNF3W1gi47R65MQs754KB7zTaGuYZ and 1BBqjKsYuLEUE9Y5WzdbzCtYzCiQgHqtPN—totaling 70,411.46 BTC.

3. On approximately April 9, 2013, the Bitcoin addresses that received the 70,411.46 BTC from Silk Road sent 69,471.082201 BTC (approximately \$14 million at the time of transfer) to 1HQ3Go3ggs8pFnXuHVHRytPCq5fGG8Hbhx (hereafter “1HQ3”). Individual X is the individual that effectuated this transaction.

4. I have personally investigated and spoken with Individual X. Raymond Ngan is not Individual X. Furthermore, my investigation has not revealed any association or connection between Ngan and Individual X.

5. I have been provided with a list of twelve names who Claimants believe may be associates and/or affiliates of Raymond Ngan. None of these individuals is Individual X.

SCAMS INVOLVING 1HQ3

6. Since 2013, 1HQ3 has been one of the most sought-after Bitcoin addresses in history given the large number of bitcoins it held for years. On November 2, 2020, it was number five among the top 100 richest Bitcoin addresses. Attached hereto as Exhibit 1 is a true and accurate copy of a screenshot I took from a publicly available website showing 1HQ3 as the fifth richest Bitcoin address as of November 2, 2020, with a balance of 69,370 BTC (worth \$930,206,633 USD), equivalent to 0.3743% of all Bitcoin in circulation.

7. The lure and notoriety of 1HQ3 has made it a target and/or subject of numerous scams for years. For example, there have been numerous posts involving 1HQ3 on Pastebin.com, a text storage website that is a type of online content-hosting service where users can store plain text. Some of those posts include the following:

a. On approximately June 4, 2016, an unknown individual submitted a post to Pastebin (www.pastebin.com/UPvLQDeH), that contained 1HQ3 and about 999 other addresses. The

1 post claimed that anyone who paid 0.0005 BTC would receive the private keys for all the addresses in
2 the list. It appears six people fell for this scam because the payment address received 0.0030 BTC. As
3 described later, anyone who possesses the private key for a particular Bitcoin address has the ability to
4 transfer bitcoin from the corresponding Bitcoin address.

5 b. On approximately February 25, 2020, an individual using the moniker
6 “KILOHACK3R” submitted a post to Pastebin (www.pastebin.com/eKu5RttH) that contained 1HQ3
7 and about 50 other Bitcoin addresses. The post claimed to be selling the private keys for all the
8 addresses on the list for 0.01 BTC. It does not appear that anyone sent 0.01 BTC but the address
9 received a total of about 0.005 BTC.

10 c. Similar to the posts above, I found at least eight additional posts that offered the
11 private keys for 1HQ3 for sale:

- 12 i. A post dated approximately January 15, 2018 claiming to have the private
13 keys for 40 addresses including 1HQ3 for the price of 0.1 BTC
14 (www.pastebin.com/mvYN86t4).
- 15 ii. A post dated approximately March 4, 2018 claiming to have the private keys
16 for 40 addresses including 1HQ3 for the price of 0.05 BTC
17 (www.pastebin.com/nuAzpzdH).
- 18 iii. A post dated approximately January 2, 2018 claiming to have the private keys
19 for 40 addresses including 1HQ3 for the price of 0.37 BTC
20 (www.pastebin.com/RzP8Ve9r).
- 21 iv. A post dated approximately September 25, 2018 claiming to have the private
22 keys for 40 addresses including 1HQ3 for the price of 13.10 BTC
23 (www.pastebin.com/14d6vv7v).
- 24 v. A post dated approximately March 4, 2018 claiming to have the private keys
25 for 40 addresses including 1HQ3 for the price of 1.1 BTC
26 (www.pastebin.com/0kenaYuL).

- vi. A post dated approximately November 30, 2017 claiming to have the private keys for 1,000 addresses including 1HQ3 for the price of 0.005 BTC (www.pastebin.com/iBuuhbpM).
- vii. A post dated approximately February 14, 2018 claiming to have the private keys for 350 addresses including 1HQ3, but did not require transferring Bitcoin to purchase the private keys but instead a link was provided that purported to allow the viewer to download the private keys (www.pastebin.com/jJcsExbJ).
- viii. A post dated approximately October 27, 2019 claiming to have the private keys for 40 addresses including 1HQ3 available for the price of 1.1 BTC (www.pastebin.com/ARQbtNgf).

8. Additionally, I am aware of attempts by others to falsely claim ownership of Bitcoin addresses with large balances, including at least two separate individuals claiming ownership or possession of the 69,370 BTC at issue in this case. For example, I was recently alerted to an individual who attempted to claim ownership of bc1qa5wkgaw2dkv56kfvj49j0av5nml45x9ek9hz6, the IRS-CI controlled Bitcoin address that received the 1HQ3 funds.

9. I also know of reports that a password protected wallet advertised to contain the private key for the 1HQ3 Bitcoin address was being passed around by hackers as recently as September of 2020, thereby making it possible for numerous individuals to claim they had this wallet but could not get into it. Although I believe that the wallet.dat file did not contain the private key for 1HQ3, it is possible that the wallet.dat file contained the private key. On September 9, 2020 Vice published an article titled “Hackers Are Trying to Break Into This Bitcoin Wallet Holding \$690 Million.” (Available online at <https://www.vice.com/en/article/bv8k4v/hackers-are-trying-to-break-into-this-bitcoin-wallet-holding-dollar690-million>.) The article states that hackers had been trading 1HQ3 on forums and underground marketplaces “in hopes of recovering the stash of cryptocurrency.” The article further states the following:

In the case of this Bitcoin wallet, it seems that it had been circulating for a while with no luck to those who attempt cracking it.

In fact, hackers have been trading the wallet on various occasions. On June 29 of last year, someone nicknamed humerh3 tried to sell the wallet on Bitcointalk, one of the most popular forums dedicated to the cryptocurrency. Another forum member noticed a listing on All Private Keys for the \$690 million wallet earlier this year as well. That listing is now gone, but another site has it on sale.

There is no guarantee, however, that this wallet.dat file that's going around actually holds the lost Bitcoin. It's possible that someone forged this wallet so that it would have the 1HQ3Go3ggs8pFnXuHVHRytPCq5fGG8Hbhx address but not its corresponding private key, which is what one would need to get the bitcoins, according to cryptocurrency experts.

BITCOIN OVERVIEW

10. Through my training and experience, and through reference to open-source information available via the Internet, I know the following:

11. Bitcoin is a type of virtual currency.¹ Virtual currency (also known as cryptocurrency or digital currency) is a digital representation of value that can function as a medium of exchange, a unit of account, and/or a store of value.² Virtual currency is not issued by any government or bank. It is generated and controlled through computer software operating on a decentralized, peer-to-peer network. Virtual currency is not illegal in the United States and may be used for legitimate financial transactions. However, virtual currency is frequently used in conjunction with illegal or restricted activities, including, for example, purchasing illegal narcotics on darknet markets.

12. To send and receive bitcoin, the parties involved in a transaction use Bitcoin "addresses." A Bitcoin address is somewhat analogous to a bank account number and is represented as a 26-to-35-character-long case-sensitive string of letters and numbers. Each Bitcoin address is controlled through the use of a unique, private key. This key is the equivalent of a password or PIN and is necessary to access the funds associated with a Bitcoin address. Only the holder of a Bitcoin address' private key can authorize transfers of bitcoin from that address to other Bitcoin addresses. Users can operate multiple

¹ Bitcoin is both a cryptocurrency and a protocol; because of this, capitalization differs. Accepted practice is to use "Bitcoin" (singular with an uppercase letter B) to label the protocol, software, and community, and "bitcoin" (with a lowercase letter b) to label units of the currency. That practice is adopted here.

² For the purposes of this affidavit, "digital currency," "cryptocurrency," and "virtual currency" address the same concept.

Bitcoin addresses at any given time and can use a unique Bitcoin address for each transaction.

13. When a sender initiates a Bitcoin transaction, the sender transmits a transaction announcement across the peer-to-peer Bitcoin network. To complete a transaction, a sender needs only the Bitcoin address of the receiving party and the sender's own private key. This information on its own rarely reflects any identifying information about either the sender or the recipient. As a result, little-to-no personally identifiable information about the sender or recipient is transmitted in a Bitcoin transaction itself. Once the sender's transaction announcement is verified by the network, the transaction is added to the blockchain, a decentralized public ledger that records every Bitcoin transaction. The blockchain logs every Bitcoin address that has ever received bitcoin and maintains records of every transaction for each Bitcoin address.

14. While a Bitcoin address owner's identity is generally anonymous within the blockchain (unless the owner chooses to make information about the owner's Bitcoin address publicly available), investigators can often use the blockchain to identify the owner of a particular Bitcoin address. Because the blockchain serves as a searchable public ledger of every Bitcoin transaction, investigators can trace transactions to, among other recipients, virtual currency exchanges.

REVIEWING THE BITCOIN PUBLIC LEDGER

15. The Bitcoin public ledger can be accessed from any computer connected to the internet simply by searching for it in a search program like Google. The entire Bitcoin public ledger is stored on most of the computers that make up the peer-to-peer network.

16. Importantly, once a Bitcoin address is used, it becomes traceable by the history of all transactions that the address is involved with. Anyone can see the balance and all transactions of any address. This information is part of the public ledger.

PROOF OF OWNERSHIP OF BITCOIN ADDRESSES

17. An individual can prove ownership of a Bitcoin address by using the address itself to sign a message via digital signature. The signing mechanism is the primary way of proving that a particular message or a piece of data comes from your end and not from someone else. By signing a message to a Bitcoin or cryptocurrency address, the signer is demonstrating that they are the owner of the funds that a wallet holds. The digital signature acts as proof that someone controls the private keys of the particular

1 address. In the Bitcoin community, there is a popular saying—“Not your keys, not your bitcoin”—
2 which exemplifies the importance of actually possessing the private key to a Bitcoin address in order to
3 establish true ownership.

4 18. For example, following the notorious Twitter hack in July of 2020 that compromised
5 approximately 130 Twitter accounts pertaining to politicians, celebrities, and musicians, special agents
6 in my squad seized the bitcoin received by the hackers through the scam and it is expected to be returned
7 to their rightful owners. In the case of one victim, who needed to prove ownership of the Bitcoin
8 address he used to send funds to the scammers, the victim verified ownership of the Bitcoin address by
9 using the address to digitally sign a message. This is how ownership of a Bitcoin address is usually
10 verified, not by simply providing a screenshot of a well-known address on a blockchain explorer site.

11 19. The document provided by counsel for Claimants to the government as Exhibit 5 in
12 support of their claim as “proof” that Ngan owned or controlled 1HQ3 (attached hereto as Exhibit 2) is
13 nothing more than a screenshot of a Bitcoin address available to the public on the top 10 richest Bitcoin
14 address list. Nothing in that exhibit demonstrates proof of ownership or control in any way. By way of
15 illustration, I do not have control over 35hK24tcLEWcgNA4JxpvbkNkoAcDGqQPsP (hereafter
16 “35hK”) the richest Bitcoin address listed on Exhibit 1; however I can input that address into the same
17 website (blockchain.com) and generate a similar screenshot to Exhibit 5. Attached hereto as Exhibit 3 is
18 a true and accurate copy of the screenshot I generated by inputting 35hK into blockchain.com. This is
19 not proof that I have ownership, possession, or control over 35hK and those in the Bitcoin community
20 would scoff at anyone suggesting as much.

21 ///

22 ///

23 ///

24 ///

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26 ///

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28 ///

20. I know that Claimants' Exhibit 5 was extracted by using a search function on blockchain.com because the link to <https://www.blockchain.com/btc/address/1HQ3Go3ggs8pFnXuHVHRytPCq5fGG8Hbhx> is explicitly stated in the footer of the exhibit and because the document itself contains links to the website (which can be accessed by any member of the public with an Internet browser).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed this 13th day of July, 2021 in East Lansing, Michigan.

/s/ Jeremiah Haynie
JEREMIAH HAYNIE
Special Agent
Internal Revenue Service – Criminal Investigation

EXHIBIT 1




Case 2:23-cv-015514, Doc. 27-1, Filed 07/27/23, ID: 12648296, DktEntry: 27, Page 22 of 32

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EXHIBIT 2

Bitcoin Address

Summary		
Address	1HQ3Go3ggs8pFnXuHVHRytPCq5fGG8Hbhx	
Hash 160	b3dd79fb3460c7b0d0bbb8d2ed93436b88b6d89c	
Transactions		
No. Transactions	159	
Total Received	69,471.12363147 BTC	
Final Balance	69,370.12363147 BTC	


Request Payment Donation Button



Transactions


Filter▼

0666de82d8b58570da093c09e96041c5b7e21ecda41...	2018-12-17 06:06:08
3BU1rT4aZFTDDWt6yxheedV8kbdrU2WMqM → 1HQ3Go3ggs8pFnXuHVHRytPCq5fGG8Hbhx	0.00001088 BTC
	0.00001088 BTC



Compare, convert, and analyze the top cryptos

TRACK THE MARKET



813ba20bd5de583397bee08b69b85ac5c2dae8afd5d...	2018-12-09 04:52:19
199J6ZBSFsLtrRX5WuCiZCynj7Zh3hZcgV → 1HQ3Go3ggs8pFnXuHVHRytPCq5fGG8Hbhx	0.00000888 BTC

EXHIBIT 3

Sponsored Content

Explorer > Bitcoin Explorer > Address

Search your transaction, an address or a block

USD

Address

USD

BTC

This address has transacted 391 times on the Bitcoin blockchain. It has received a total of 279,904.98830224 BTC (\$9,725,830,638.04) and has sent a total of 172,453.29865255 BTC (\$5,992,217,522.95). The current value of this address is 107,451.68964969 BTC (\$3,733,613,115.09).



Address	35hK24tcLEWcgNA4JxpvbkNkoAcDGqQPSP
Format	BASE58 (P2SH)
Transactions	391
Total Received	279904.98830224 BTC
Total Sent	172453.29865255 BTC
Final Balance	107451.68964969 BTC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

APPROXIMATELY 69,370 BITCOIN
(BTC), BITCOIN GOLD (BTG) BITCOIN
SV (BSV) AND BITCOIN CASH (BCH), et
al.,

Defendants.

Case No. [20-cv-07811-RS](#)

**ORDER GRANTING MOTION TO
STRIKE BUCKLEY CLAIM, DENYING
MOTION FOR LEAVE TO SEEK
RECONSIDERATION OF ORDER
STRIKING HOSSEIN CLAIM, AND
DENYING MOTIONS TO ENTER
SEPARATE JUDGMENTS**

This is a civil forfeiture action arising from the seizure of approximately 69,370 Bitcoin, Bitcoin Gold, Bitcoin SV, and Bitcoin Cash (“bitcoin”) allegedly derived from certain unlawful activity. The bitcoin was stolen by “Individual X” from addresses at “Silk Road,” which is described by the government as having been “the most sophisticated and extensive criminal marketplace on the Internet, serving as a sprawling black market bazaar where unlawful goods and services, including illegal drugs of virtually all varieties, were bought and sold regularly by the site’s users.” In 2013, law enforcement seized and shut down Silk Road.

In 2020, further investigation revealed that Individual X had hacked into Silk Road and through 54 transactions sent a total of over 70,000 bitcoin to two addresses he controlled. The bulk of that bitcoin was later transferred to another address, from which it was ultimately seized. Individual X and the creator and owner of Silk Road have both consented to the forfeiture of the

1 seized bitcoin.

2 Several entities and individuals filed claims asserting that the seized bitcoin could include
3 bitcoin in which they have ownership rights. Prior orders struck several of those claims and denied
4 a motion to intervene by another potential claimant. At this juncture, a single claim remains. This
5 order addresses that claim, denies one of the other claimant's motion for leave to seek
6 reconsideration, and denies motions to enter separate judgments under Rule 54(b).¹

7
8 1. Buckley claim

9 Lucas Buckley, "as Trustee for the Gox Victim Bitcoin Trust" filed a verified claim in
10 which he asserts an ownership interest in "0.01 BTC Bitcoin ("BTC"), Bitcoin Gold ("BTG"),
11 Bitcoin SV ("BSV"), Bitcoin Cash ("BCH"), and future Bitcoin hard forks (collectively the
12 "Bitcoin") of those Defendant funds that are the subject of this forfeiture action." Buckley
13 purchased the bitcoin from Roman Hossain, one of the other claimants whose claims have
14 previously been stricken.

15 The government's motion to strike first asserts Buckley's claim fails because it is "entirely
16 derivative" of Hossain's claim. Hossain, however, alleged that his account at Mt. Gox held
17 245.98124 BTC and that the amount stolen from him was 245.92 BTC.² Buckley contends the
18 0.01 BTC he purchased represents a portion of the fractional bitcoin remaining in Hossein's
19 account *after* the theft of the 245.92 BTC. As such, the prior order's conclusion that Hossein had
20 not plausibly alleged his 245.92 BTC were part of what the government seized from the 1HQ3
21 wallet, does not automatically also foreclose Buckley's claim.

22 Buckley's claim nevertheless fails at the outset because he undeniably acquired his
23 asserted interest in the seized property with full knowledge of the forfeiture proceedings.

24
25 ¹ The factual and procedural background has been described in more detail in prior orders and will
not be further recounted here.

26 ² Hossein's claim alleged "at least" that amount was stolen. In its motion to strike Hossein's claim,
27 however, the government pointed to transfers totaling exactly that amount.

Buckley's verified claim asserts his interest in the property as an "innocent owner" under 18 U.S.C. § 983 (d). Subparagraph (3) of that section, however, provides:

With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term "innocent owner" means a person who, at the time that person acquired the interest in the property—

(i) was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); and

(ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture.

Buckley plainly cannot satisfy subparagraph (ii), as he knew the property had already been seized and was the subject of this forfeiture proceeding before he purchased the 0.01 BTC from Hossein.³

Even assuming Buckley could somehow avoid the import of subparagraph (ii), however, his claim would still fail for the same core reason as those of Hossein and other claimants—he offers nothing more than undue speculation that any of the seized bitcoin is his property. Buckley's theory is that he purchased 0.01 BTC out of the approximately 0.06 BTC that remained in Hossein's account after hackers had stolen the 245.92 BTC in February of 2013. The notion that Hossein's remaining bitcoin was then stolen, then transferred to Silk Road, and then stolen again and transferred ultimately into the 1HQ3 wallet, is non-sensical given that the theft of the subject bitcoin took place months earlier. Even if, as Buckley and Hossein both contend, Mt. Gox records are not sufficiently reliable to establish the timing, Buckley has offered nothing other than guesses and bald assertions in support of his contention that Hossein's bitcoin ended up in the 1HQ3 wallet. Although Buckley offers an expert who opines certain transfers from Mt. Gox to Silk Road were "indicative of theft or siphoning," he does not show that Hossein's bitcoin is part of the seized property, or even that there is a sufficiently plausible factual basis to so allege.

³ The government did not clearly articulate this issue until its reply brief, instead subsuming it in an argument that Buckley's interest is only "nominal."

Buckley's further argument that factual disputes preclude dismissal is based on two flawed premises. First, Buckley insists that because his claim is "verified," it must be treated as evidence. Conclusory and/or implausible assertions, however, do not foreclose resolution at the pleading stage. *See Ashcroft v. Iqbal*, 556 U.S. 662, 681, 129 S. Ct. 1937, 1951 (2009) ("It is the conclusory nature of respondent's allegations, rather than their extravagantly fanciful nature, that disentitles them to the presumption of truth.")

Second, Buckley (and Hossein before him) appear to believe they can prevail if they show that *specific* bitcoin, once in Hossein's Mt. Gox account, was in the 1HQ3 wallet when seized. The assumption is that the law would not treat bitcoin as fungible in the same way as paper currency. Individual bitcoins, and fractions thereof, apparently are uniquely identifiable. So, of course, is paper currency, because each bill carries a unique serial number.

Consider, however, what would happen if a person deposited a \$100 bill in a bank account, keeping a record of its serial number. Later that specific bill is taken in a robbery from that same bank. The government eventually seizes a quantity of cash from the robbers, or other downstream criminals, and that specific bill is part of the seized funds. If the bank did not deduct \$100 from the depositor's account when the robbery occurred on grounds that specific bill had been stolen, he or she would not have a viable claim in the forfeiture proceeding. Furthermore, if a person filed a claim baldly asserting that the property included his or her specific bills, he or she likely would not be entitled to discovery of all the serial numbers of the seized cash merely in the hopes of being able to assert a claim.

There may, of course, be reasons to treat the fungibility of cryptocurrency differently from that of paper currency. At least at this point, however, neither Buckley nor any of the other claimants has shown that the law would permit them to trace individual bitcoins without consideration of fungibility issues.

Finally, Buckley refers to potential claims "for approximately 34,754 additional bitcoin that were formerly held in accounts on Mt. Gox." He acknowledges, however, that he lacks knowledge "which, *if any*" (emphasis added) of that bitcoin was transferred to the 1HQ3 wallet.

1 Accordingly, the government's motion to strike the claim is granted.

2
3 2. Hossein reconsideration

4 Pointing to the expert declaration submitted by Buckley as "new evidence," Hossein seeks
5 leave to file a motion for reconsideration of the order striking his own claim. Hossein insists the
6 declaration undermines the government's showing as to when and where bitcoin moved, and
7 thereby at a minimum reflects the existence of disputed factual issues. As discussed above, the
8 declaration does not create factual issues precluding disposition of these claims on the pleadings.

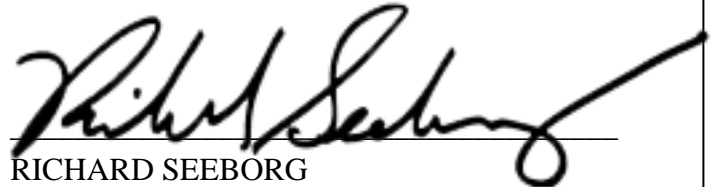
9 Furthermore, even assuming no weight at all should be given to the government's evidence
10 as to the timing of the various thefts and where funds stolen from Mt. Gox went, Hossein would
11 not be entitled to a different result. The prior order expressly held, "[e]ven apart from the timing,
12 Hossein would have nothing other than pure speculation to suggest that his Bitcoin was transferred
13 to Silk Road In essence, Hossain has done nothing more than show that he owned some
14 Bitcoin that was stolen from him, and then baldly claimed that even though the seized Bitcoin was
15 stolen from somewhere else, some of it must be his. The timing proves otherwise, but even in the
16 absence of the government's showing on that point, Hussain has not met his burden to show a
17 colorable interest in the property." The request for leave to seek reconsideration is denied.

18
19 3. Rule 54(b) motions

20 Claimants Battle Born Investments Company, LLC, First 100, LLC, and 1st One Hundred
21 Holdings, LLC, (collectively "Battle Born") and claimant Ilija Matusko seek entry of separate
22 judgments under Rule 54(b) of the Federal Rules of Civil Procedure. While separate judgments
23 would not have been warranted in any event, with the striking of Buckley's claim, this matter is
24 now ripe for final judgment, which will render the motions moot. They are therefore denied.
25 The government shall promptly submit a proposed final judgment.

IT IS SO ORDERED.

Dated: July 14, 2022



RICHARD SEEBORG
Chief United States District Judge

United States District Court
Northern District of California